

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7496

Investigation into Central Vermont Public Service	)	Hearing at
Corporation's staffing levels	)	Montpelier, Vermont
	)	June 10, 2009

Order entered: 8/20/2009

PRESENT:	James Volz, Board Chair David Coen, Board Member John Burke, Board Member
APPEARANCES:	Dale A. Rocheleau, Esq. Morris L. Silver, Esq. For Central Vermont Public Service Corporation  Geoffrey Commons, Esq. For Vermont Department of Public Service

**I. INTRODUCTION**

This investigation concerns the question of whether Central Vermont Public Service Corporation ("CVPS" or "the Company") is maintaining an appropriate staffing level for an electric utility of its size. We opened this investigation upon the joint request of CVPS and the Vermont Department of Public Service ("Department" or "DPS"), pursuant to the terms of their settlement in CVPS's most recent rate case proceeding.<sup>1</sup> Today, we direct CVPS to implement the recommendation of the Huron Consulting Group ("Huron") that CVPS undertake a comprehensive review of its organizational structure and staffing levels and costs to determine

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1. Docket 7485, *Investigation into Central Vermont Public Service Corporation's rates in effect, on a bills-rendered basis, as of January 1, 2009*, Order of 2/13/09 at 3.

the appropriate structure and number of staff the Company should employ at ratepayer expense.<sup>2</sup> In addition, we determine that it is appropriate to increase the 2010 non-power-cost cap established in CVPS's alternative regulation plan to recognize the Company's actual level of employees.

## **II. PROCEDURAL HISTORY**

On February 13, 2009, in response to a joint request from CVPS and the Department, the Public Service Board ("Board") opened an investigation into the staffing levels of CVPS.

On March 25, 2009, the Board convened a prehearing conference in this matter. Appearances were entered by Geoffrey A. Commons, Esq., on behalf of the DPS; and Dale A. Rocheleau, Esq., on behalf of CVPS.<sup>3</sup>

On April 10, 2009, the Department filed direct testimony.

On April 15, 2009, CVPS served upon the Department the first of three rounds of discovery regarding the Department's direct testimony.

On May 1, 2009, CVPS filed direct testimony.

On May 6, 2009, the Department served upon CVPS the first of two rounds of discovery regarding CVPS' direct testimony.

On May 22, 2009, the Department advised the Clerk of the Board via electronic mail that it would not be filing any rebuttal testimony in this proceeding.

On June 8, 2009, the Department filed a revised version of Exhibit DPS-RWB-1 to the direct testimony of witness Ronald W. Behrns.<sup>4</sup>

On June 10, 2009, the Board convened a technical hearing in this proceeding in Montpelier, Vermont.

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2. Huron made this recommendation to CVPS in its report at the conclusion of a business process review performed by Huron pursuant to a settlement reached between the Department and CVPS in Docket 7321. *See* Exh. CVPS-1 at ch. VI, p. 83 (hereinafter also referred to as the "Huron Report").

3. On April 15, 2009, a notice of appearance on behalf of CVPS also was filed by Morris L. Silver, Esq.

4. This document was later admitted into the evidentiary record as Exhibit DPS-1.

On June 16, 2009, the DPS filed a further revised version of Exhibit DPS-RWB-1, which corrected an error pointed out at the technical hearing and replaces Exhibit DPS-1 that was admitted into evidence at the technical hearing.

On July 1, 2009, the Parties filed initial briefs.

On July 17, 2009, the Parties filed reply briefs.

Also on July 17, 2009, in response to a record request made by the Board during the technical hearing, CVPS filed an exhibit consisting of printouts of CVPS's exempt employee time tracking screens that are currently in use as a part of CVPS's computer-assisted accounting system. CVPS's filing stated that it had no objection to the admission of this document into evidence. At the technical hearing, the DPS stated it had no objection to the admission of the printout of exempt employee time tracking screens into evidence.<sup>5</sup> Accordingly, we are admitting this document into evidence as Exhibit Board-3.

### **III. FINDINGS**

Based on the evidence in the evidentiary record in this docket, we hereby make the following findings.

1. Approximately half of CVPS' workforce consists of salaried employees who are exempt from the terms of any collective bargaining agreements CVPS has with its union employees ("exempt employees"). Tr. 6/10/09 at 185-186 (Beraldi); exh. DPS-1 at 1, lines 1-24.
2. CVPS monitors the productivity of its employees through management observation and communication. Exh. DPS-cross-4.
3. Exempt employees typically report working 40 hours per week, regardless of how many hours they actually work. Tr. 6/10/09 at 214 (Beraldi) and 245-246 (White).
4. No documentation exists to verify whether CVPS' exempt employees regularly work in excess of 40 hours per week. White/Beraldi pf. at 19; tr. 6/10/09 at 214 (Beraldi).
5. In proportional terms, CVPS has more employees than either of Vermont's other large utilities, Green Mountain Power Corporation ("GMP") or Vermont Electric Cooperative, Inc. ("VEC"), when measured against the following comparative baselines:

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5. Tr. 6/10/09 at 205-206 (Commons).

- Square miles of territory served
- Net utility plant in service
- Revenue generated in 2008
- Number of customers served.

Behrns pf. at 5; exh. DPS-1 at 1.

6. These comparative baseline measures form the basis of the Department's "benchmark" analysis. This analysis suggests that additional inquiry could explain the staffing-level differences between CVPS and GMP and VEC. Behrns pf. at 6.

7. Comparing CVPS' staffing levels and operational costs to those of GMP and VEC is appropriate because all three companies operate in similar geographical territory, are regulated in like fashion and participate in the same power market to purchase power. Tr. 6/10/09 at 169-172, 250, and 261-262 (White/Beraldi).

8. CVPS's non-power costs per customer are higher than those of GMP and VEC. Exh. DPS-1 at 2.

9. Judging by the Department's "benchmark" analysis, CVPS has 2.8 times more employees than GMP and 5.6 times more employees than VEC. Behrns pf. at 5; exh. DPS-1 at 1.

10. The functional areas where CVPS's staff levels appear to deviate most in proportional terms from GMP and VEC are corporate services, human resources, information technology, finance and transportation. Exh. DPS-1 at 1; tr. 6/10/09 at 112-114 (Behrns).

11. In the category of field workers such as linemen, it is possible that the difference in employee headcount between GMP and CVPS is due to differences in the number of square miles of service territory or distribution line miles each company is responsible for maintaining and servicing. Behrns pf. at 6.

12. Any difference in staffing numbers between CVPS and GMP due to line miles should be expected to manifest in the number of linemen and engineers these companies employ, but not in the areas such as finance or accounting. Behrns pf. at 6.

13. In Vermont, power and transmission costs typically make up approximately 70-80 percent of an electric utility's cost of service. By comparison, CVPS's ratio is closer to 52 percent. Behrns pf. at 8.

14. CVPS's comparatively favorable power/transmission cost ratio is due to the fact that at present, CVPS's major power contracts are priced below market prices. This advantage is likely to change in approximately three years. Behrns pf. at 8; tr. 6/10/09 at 169-174 (White).

15. Beginning in 2012, there is likely to be significant upward pressure on CVPS' rates; the need for CVPS to manage staffing and other expenses more closely will increase as well. Exh. CVPS-1 at ch. VI, p. 38.

16. CVPS should be taking steps now to bring its non-power/transmission costs into line with those of other Vermont utilities. Behrns pf. at 8.

17. The Department believes its "benchmark" analysis of CVPS' present staffing levels suggests that ratepayers could be paying up to \$9 million annually due to an excessive headcount. Tr. 6/10/09 at 101 (Behrns).

18. The Department has not offered any specific data showing that CVPS has an excessive headcount in any one area of its operations. Behrns. pf. at 8.

19. The Department's "benchmark" analysis does not account for differences in the corporate structures of CVPS, GMP and VEC. White/Beraldi pf. at 11-12.

20. The structural differences between CVPS, GMP and VEC may have a significant impact on the compliance and reporting requirement for each of these companies, which, in turn, may affect the number of employees each company needs. White/Beraldi pf. at 13.

21. The Department's "benchmark" analysis does not account for differences in the headcounts of CVPS, GMP and VEC due to the effects of in-sourcing functions as opposed to out-sourcing them. White/Beraldi pf. at 13.

22. The Department's "benchmark" analysis reflects no information from GMP or VEC about the number of hours that their exempt employees work above 40 hours per week. Tr. 6/10/09 at 73 (Behrns).

23. CVPS' current organizational structure has not been reviewed on a comprehensive basis in recent years to determine whether it is the most cost-effective structure. The Company appears to have some layers of management and spans of control that may not be aligned with CVPS's functional and organizational needs. Exh. CVPS-1 at ch. VI, pp. 33-35.

24. In July 2008, CVPS had 556 employees. As of the end of April 2009, CVPS had 545 employees. Tr. 6/10/09 at 167 (Beraldi).

#### **IV. DISCUSSION**

This investigation is the result of a disagreement between the Department and CVPS as to the appropriateness of CVPS's staffing levels. As part of a rate case settlement approved by the Board in January of 2008, CVPS and the DPS agreed that they would jointly select an expert consultant to undertake a Business Process Review that would examine, among other items, CVPS's staffing levels.<sup>6</sup> The Department and CVPS agreed to retain Huron, who completed the Business Process Review in October 2008 and generated a report detailing their conclusions in the Huron Report. However, because of disagreements between CVPS and the Department concerning the scope and methodology used by Huron in analyzing the Company's staffing levels, the Huron Report did not provide a "conclusive recommendation" regarding CVPS's staffing levels.<sup>7</sup> Consequently, Huron recommended that CVPS pursue another, more comprehensive review of its organizational structure and staffing levels and costs.<sup>8</sup>

Dissatisfied with the outcome documented by the Huron Report, the Department has continued to press its concerns about CVPS's staffing levels, notably in Docket 7336, in which the Company's alternative regulation plan was reviewed and approved, and again in Docket 7485, in which these parties settled CVPS's most recent rate increase request by agreeing to jointly petition the Board for the staffing level investigation that now is the subject of this docket. In our order approving the settlement in Docket 7485, we made the following finding:

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6. Docket 7321, Tariff Filing of Central Vermont Public Service Corporation Requesting a 4.46% increase in its rates, effective June 29, 2007, for implementation as of February 1, 2008, Order of 1/31/08 at 6.

7. Exh. CVPS-1 (*Cover letter from F. Wayne Lafferty, Huron Consulting Group, to Joseph Kraus, Vice-President - Operations and Engineering, CVPS and Stephen Wark, Director, Consumer Affairs & Public Information Division, DPS, dated October 13, 2008, at 2*).

8. Exh. CVPS-1, ch. VI at 83. The Huron Report specifically noted that "a narrow review of just headcount will not provide an adequate assessment of CV's cost structure especially when comparisons are made to other utilities which may outsource different functions, have different types of operating territories, follow different accounting practices or exhibit other variances in operating characteristics." *Id.* at 83-84.

Upon conclusion of the docket concerning CVPS staffing levels, the non-power cost cap applicable to the next base rate filing under the CVPS plan will be adjusted, as warranted, to reflect the outcome of that docket.<sup>9</sup>

In this Order, we address first the general issue of CVPS's staffing levels, followed by the effect of our conclusions in this area on the calculation required by CVPS's alternative regulation plan.

#### Tracking Actual Hours Worked

In this case the Department has sought an order requiring CVPS to track actual hours worked by salaried employees (also called "exempt" employees). Such employees make up about half of CVPS's work force, and presently do not keep any records of the time actually spent working. The DPS has long been concerned that CVPS is over-staffed, which means ratepayers are funding an inefficient and excessively costly operation. To support its position, the Department has offered a "benchmark" analysis – a comparison of CVPS's non-power costs to those of GMP and VEC – the two most similarly-situated utilities in Vermont. However, the Department concedes that its benchmark comparison does not conclusively prove that CVPS is over-staffed. Therefore, in order to prepare for a more rigorous and conclusive review of CVPS' staffing levels at a future point in time, the Department believes a useful starting point would be for CVPS to now begin tracking the actual hours worked by its exempt employees.

CVPS rejects any contention that it is overstaffed, and therefore opposes the Department's proposal, arguing that the hour-tracking requirement would cause demoralizing disruption for its employees and constitutes an intrusion upon the Company's management of its affairs that the Department has failed to justify, as there has been no showing that CVPS is failing to conduct its business "so as to be reasonable and expedient, and to promote the safety, convenience and accommodation of the public" as required by 30 V.S.A. § 209(a)(3). The Company further takes

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9. Docket 7485, Order of 2/13/09 at 4 (finding 10).

issue with the Department's proposed tracking requirement because it is not likely to yield information that can reasonably be used to improve CVPS's productivity or efficiency.<sup>10</sup>

CVPS contends that it "should be accorded discretion to implement such strategies and systems as it determines will enable the Company to operate in accordance with its obligations to its stockholders and the public."<sup>11</sup> Therefore, according to CVPS, this investigation should be closed because "the evidence supports a conclusion that the Company's staffing levels and costs are reasonable."<sup>12</sup> The Department counters that the evidence in fact supports a finding that the Company's staffing levels are unreasonable, and that CVPS "has not shown any sufficient basis for its inordinately high employee count or for its excessive costs per customer."<sup>13</sup>

We are mindful that Vermont law has long established that utilities are vested with significant discretion to manage their operations. The Vermont Supreme Court has held that the function of the Board is one of control, not management, in reviewing a utility's actions.<sup>14</sup> However, Vermont law also charges the Board with broad powers to ensure that utilities conduct their business in a fashion that is consistent with the public good. Specifically, the Board has jurisdiction to hear, determine, render judgment and make orders and decrees in all matters concerning:

the manner of operating and conducting any business subject to supervision under this chapter, so as to be reasonable and expedient, and to promote the safety, convenience and accommodation of the public . . .<sup>15</sup>

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10. The Department specifically proposes that these hours tracked should be used to measure productivity, where the hours are used as inputs for employees, including hours worked by salaried employees, and completed work load volumes are used as outputs. For efficiency measurements, the Department suggests that CVPS should establish standards for each respective work activity or task. Behrns pf. at 3.

11. CVPS Initial Brief at 11.

12. *Id.* at 13.

13. DPS Reply Brief at 2.

14. *Letourneau v. Citizens Utilities Company*, 125 Vt. 38, 41 (1965); *Petitions of New England Tel. & Tel. Co.*, 116 Vt 480, 501 (1951).

15. 30 V.S.A. § 209(a)(3).



Furthermore, the Vermont Supreme Court has recognized the Board's broad statutory authority to exercise jurisdiction over a utility to ensure that its operations are "reasonable and expedient,"<sup>16</sup> and, more specifically, to ensure that personnel costs borne by ratepayers are set at levels that result in just and reasonable rates.<sup>17</sup> Therefore, we conclude that this investigation falls well within our supervisory authority over CVPS's staffing levels and the attendant costs imposed upon CVPS ratepayers.

Turning to the Department's request that we order CVPS to begin tracking actual hours worked by its exempt employees, we decline to impose this requirement as we are not persuaded that it would yield any probative data that could lead to a conclusive assessment of the appropriateness of CVPS's staffing levels. The tracking information the Department seeks to develop is appropriate for measuring the productivity and efficiency of workers who perform repetitive tasks.<sup>18</sup> But CVPS's exempt employees are knowledge-based workers whose efforts are not repetitive in nature and for whose activities there are no readily-measurable standard units.<sup>19</sup> Nor would requiring CVPS to track actual employee hours worked answer the question as to how much time it *should* take to perform the tasks assigned to these employees, or whether the tasks were being done well.<sup>20</sup>

One possible basis for comparison could be data collected by other electric utilities. However, while the DPS asserts that some utilities are measuring the productivity of their exempt employees, the DPS is not aware of any specific companies that are doing so.<sup>21</sup>

Finally, the Department argues that the tracked-hours data will allow CVPS' staffing levels to be "objectively determined based on the work activity and work load that evolves from

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16. *In re Petition of Verizon New England*, 173 Vt. 327, 332 (2002).

17. *In re Green Mountain Power Corp.*, 162 Vt. 378, 387(1994).

18. Exh. DPS-RWB-3 at 3-5.

19. Beraldi/White pf. at 7 and 17-18.

20. Tr. 6/10/09 at 83-84 (Behrns).

21. Tr. 6/10/09 at 87-88 (Behrns).

efficient business processes . . . ."22 But the Department admits there is a subjective element to establishing the output measures for this objective analysis that depends on exercising reasonable judgment about what the standards should be for how long it takes to generate a particular output.<sup>23</sup> We are not persuaded that implementing the Department's hour-tracking requirement will necessarily facilitate the objective assessment of CVPS' staffing requirements that the Department is seeking.

While we do not adopt the Department's recommended method for assessing whether or not CVPS is over-staffed, we are concerned that the question remains as to what is the appropriate staffing level for CVPS. Compared to GMP and VEC, CVPS appears to employ significantly more personnel to conduct its business. Even after allowing for variances in size of service territory and miles of lines to be served, CVPS has not satisfactorily explained why it requires demonstrably more personnel than the other large Vermont utilities to staff its operations in finance, accounting, information technology, corporate services, human resources and transportation. While we emphasize that as of this time, there has been no determination made that CVPS in fact is over-staffed, we conclude that if indeed CVPS has an excessive headcount as the Department suggests, then it is in the interests of CVPS's ratepayers and shareholders alike for the Company to begin confronting that issue now, while CVPS still enjoys the benefit of highly favorable power contracts that are due to expire in the next few years.

CVPS argues that its alternative regulation plan ("Plan") contains incentives for the Company to control costs, and that the decrease in the number of its employees from 556 in July 2008 to 545 in April 2009 is one indication that CVPS is responding to those incentives. CVPS asserts that it should be given more time to respond to the incentives contained in the Plan, since it is still in its first year of operation.

When we first approved the Plan, we found that, at that time, with the modifications we made to CVPS's original proposal, the Plan would contain several features that would create

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22. Behrms pf. at 13.

23. Tr. 6/10/09 at 83-84 and 86-87 (Behrns). As Department witness Behrn testified, "You have to look at the tasks they were doing and you have to look at the data and reach a judgment, okay, about what you think on average it should have taken over that period of time." *Id.* at 83-84.

cost-control incentives. These incentives included a non-power-cost cap (discussed in more detail in the following section of this Order), an earnings-sharing mechanism that allows CVPS to retain the bulk of any earnings above its authorized return on equity, and a requirement that CVPS absorb the first \$315,000 of any increases in power costs each quarter.<sup>24</sup> We are pleased to learn that CVPS is responding to the Plan's incentives. However, in order for the non-power-cost cap to function as it was intended, it is necessary for the cap to be set at an appropriate level. The issue of whether CVPS's staffing level is appropriate directly affects this level. Therefore, we do not see a need to provide CVPS with additional time to respond to the Plan's incentives before addressing the question of whether CVPS is over-staffed.

Instead, we require CVPS to implement the Huron Report recommendation that CVPS undertake a comprehensive review of its organizational structure and staffing levels and costs to determine the appropriate structure and number of staff the Company should employ at ratepayer expense. We recognize that such a review is estimated to cost between \$500,000 and \$1 million.<sup>25</sup> However, if the review were to support the results of the DPS's "benchmark" analysis of CVPS' present staffing levels, ratepayers could save up to \$9 million annually in lower personnel costs. Therefore, we conclude that while the review will be costly, the potential benefits are large enough to justify this cost.<sup>26</sup>

In addition, we note that the Docket 7321 settlement agreement (in which CVPS and the DPS agreed that a business process review would be performed) stated that CVPS and the DPS expected that CVPS would implement the recommendations made by the consultant performing the business process review.<sup>27</sup> Our Order today is consistent with that expectation.

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24. Docket 7336, Order of 9/30/08 at 32-33.

25. Tr. 6/10/09 at 100 (Behrns).

26. The cost of hiring a consultant to conduct this review will be in addition to CVPS's other costs for providing service to ratepayers. While we expect CVPS to prudently manage the cost of this review within the parameters of the cost-control incentives provided to CVPS under its alternative regulation plan, we want to ensure that the review is comprehensive and produces a reliable result of high quality. We therefore invite CVPS to propose a means, within the context of the alternative regulation plan, to enable it to recover from ratepayers the prudently incurred costs of the consultant. We will provide the DPS with an opportunity to comment on any such proposal before ruling on its acceptability.

27. Docket 7321, Order of 1/31/08 at 7 (finding 22).

Finally, we emphasize our desire to resolve the issue of whether CVPS's staffing level is appropriate. We are troubled that this issue has arisen in four recent dockets (dockets 7321, 7336, 7485, and 7496) and we have yet to be presented with a record that would allow us to make a determination regarding the appropriateness of CVPS's staffing levels. It is our intention that the new comprehensive review of CVPS's organizational structure and staffing levels and costs will produce a clear and substantial record for resolving this issue.<sup>28</sup>

Therefore, we require that, within 90 days of this Order, CVPS issue a Request for Proposals ("RFP") for a management consultant to perform the comprehensive review recommended by the Huron Report. The RFP will provide for the DPS to receive copies of all proposals as well as all reports and deliverables produced by the consultant in connection with the review. CVPS must provide the DPS with an opportunity to review and comment upon the RFP prior to its issuance, as well as participate in the selection of the consultant to conduct the review, and the development of the review plan. If there are any issues regarding these matters that CVPS and the DPS cannot agree upon, CVPS must promptly bring these issues to the Board for resolution. The Board will not allow disagreement between CVPS and the DPS to unreasonably delay or halt the completion of the review. CVPS must issue a contract for the review either within 45 days following the receipt of proposals, or within 10 days after resolution of any issues by the Board, if necessary, whichever is later.

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28. The evidentiary record of this docket to date contains data gaps that we expect will not recur in the course of the comprehensive review we are ordering CVPS to undertake today. For example, we were disturbed to learn during the technical hearings that some of the analysis concerning CVPS's efficiency rested on comparisons made between CVPS and GMP and VEC, but no attempt had been made to obtain data from GMP or VEC to assess the number of overtime hours worked by these utilities' exempt employees. *See* tr. 6/10/09 at 73 (Behrns). Similarly, we are troubled by the observation in the Huron Report that there was a failure to identify an acceptable staffing analysis methodology, and that therefore Huron's staffing analysis "is incomplete, and a firm organizational structure or staffing level recommendation cannot be made at this time." Exh. CVPS-1, ch. VI, at p. 83. As we noted in our order opening this investigation, both CVPS and the DPS failed to "avail themselves of an efficient dispute resolution mechanism that they had previously agreed to use. Neither ratepayers nor shareholders are well-served by this unproductive course of conduct." Docket 7485, Order of 11/25/08 at 3.

Effect on Alternative Regulation Plan Calculation

The Plan includes a mechanism for capping base-rate increases that is designed to provide CVPS with an incentive to carefully monitor expenses and to realize cost efficiencies when prudently possible. This cap, referred to as a "non-power-cost cap," is calculated for each year that the Plan is in effect, using a formula set forth in the Board's September 30, 2008, Order approving the Plan.<sup>29</sup> The starting point for the calculation is the costs embedded in CVPS's base rates for the previous year.

CVPS's 2009 base rates were determined in Docket 7485.<sup>30</sup> These 2009 base rates would normally be the starting point for the calculation of CVPS's 2010 non-power-cost cap. However, as part of the settlement in Docket 7485, CVPS and the DPS agreed that upon the conclusion of the new investigation into CVPS's staffing levels, the non-power-cost cap applicable to the next base rate filing under CVPS's alternative regulation plan would be adjusted, as warranted, to reflect the outcome of the investigation. Thus, it is necessary for us to determine whether, given the outcome of this docket, the non-power-cost cap applicable to CVPS's 2010 base rate filing should be adjusted, and if so, how.

CVPS contends that because the Department has failed to prove in this docket that CVPS has an excessive headcount, the Company is entitled to increase its non-power-cost cap for 2010 by \$945,000. According to CVPS, this amount represents the difference between the 554 full-time equivalent employees ("FTE") included in CVPS's original 2009 base rate filing, and the 542.75 FTEs included in the cost of service agreed to by CVPS and the DPS in Docket 7485.<sup>31</sup>

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29. Docket 7336, Order of 9/30/08 at 31-32.

30. In October 2008, CVPS made its first base rate filing under the Plan. In this filing, CVPS requested a 0.33% increase. The Board allowed this increase to go into effect for bills rendered on and after January 1, 2009, but simultaneously opened an investigation into the justness and reasonableness of CVPS's 2009 rates (Docket 7485). When Docket 7485 was settled, the parties agreed that CVPS's 2009 base rate filing would be conformed to agree in full with the terms of the settlement, and the revised tariffs attached to the settlement would supercede the tariffs previously approved by the Board for implementation effective with bills rendered January 1, 2009. Docket 7485, Order of 2/13/09 at 2.

31. We note that CVPS stated that its proposed adjustment to the non-power-cost-cap "reflects the \$945,000 that was disallowed in the Company's 2009 Base Rates due to this staffing level dispute." CVPS Brief at 15. This characterization is inaccurate. The Board did not disallow any costs from CVPS's 2009 base rates. Rather, the Board approved a settlement agreement between CVPS and the DPS which stated, in relevant part, "CVPS agrees to

The DPS argues that CVPS's 2010 non-power-cost cap should be increased to recognize CVPS's actual level of employees. The DPS asserts that since, according to testimony by CVPS in this proceeding, CVPS's actual level of employees is 545, not the 554 included in the original 2009 base rate filing, CVPS's non-power cost cap should be increased by 2.25 "average" employees (approximately \$189,000, which is the difference between CVPS's 545 actual employees and the 542.75 FTEs included in CVPS's 2009 base rates).

At the prehearing conference in this proceeding, the DPS stated that it no longer expected the Board to issue an order specifying an appropriate staff size for CVPS as a result of this docket. The Board discussed with the parties what effect this change in direction would have on the calculation of the 2010 non-power-cost cap, in light of the Docket 7485 settlement. The parties agreed that the 2010 non-power-cost cap would change "to recognize the actual level of employees."<sup>32</sup>

We determine that this agreement should be implemented. To do so, we must determine what is CVPS's actual level of employees. According to CVPS, as of July 2008, it had 556 employees, but by the end of April 2009, that number had fallen to 545. CVPS provided three reasons for the difference: permanent reductions; vacancies; and positions which the Company had yet not determined whether they would be filled.<sup>33</sup> We recognize that the actual number of employees at a company can fluctuate over time for a variety of reasons, including those provided by CVPS's witness. Nevertheless, 545 is the most recent number of CVPS employees in evidence in this proceeding. We, therefore, determine it is reasonable to include the costs associated with that number of employees in the 2010 non-power-cost cap. In other words, the

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forego the 0.33% rate increase scheduled to go into effect on a bills rendered basis as of January 1, 2009, . . . ." Docket 7485, Order of 2/13/09 at 3 (finding 3).

32. Tr. 3/25/09 at 14 (Commons); tr. 3/25/09 at 14 (Rocheleau). We view this agreement as effectively superceding the terms of Paragraph 9 of the Memorandum of Understanding that was approved in Docket 7485. See Docket 7485, Order of 2/23/09, Attachment-1 at ¶ 9. The Docket 7485 settlement contemplated that a resolution of the staffing level issue would be reached in time to adjust CVPS's 2010 non-power-cost cap for the next base rate filing required under the Plan. *Id.* See also Appendix B to Attachment-1. Because our Order today does not conclusively determine whether CVPS's staff levels are reasonable, we think it is appropriate to give effect to the compromise reached by counsel on the record in open court at the prehearing conference in this docket.

33. Tr. 6/10/09 at 167-168 (Beraldi).

2010 non-power-cost cap should be increased by the costs associated with 2.25 "average" employees.

## **V. CONCLUSION**

In today's Order we direct CVPS to implement the Huron Report recommendation that CVPS undertake a comprehensive review of its organizational structure and staffing levels and costs to determine the appropriate structure and number of staff the Company should employ at ratepayer expense. In addition, we determine that it is appropriate to increase the 2010 non-power-cost cap established in CVPS's alternative regulation plan to recognize an additional 2.25 "average" employees.

The Huron Report clearly articulated the need for better communication and an improved working relationship between CVPS and the DPS.<sup>34</sup> We are concerned that this will remain difficult to achieve until the issue regarding CVPS's staffing level is finally resolved. While institutional memory is often valuable to both utilities and regulators, in this particular instance, it is in the interest of both CVPS's ratepayers and shareholders for the DPS and CVPS to focus on the future rather than on their past conflicts. It is our intention that today's Order will set a path for a resolution of the DPS's question regarding the appropriateness of CVPS's staffing level.

## **VI. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. Within 90 days of this Order, Central Vermont Public Service Corporation ("CVPS") shall issue a Request for Proposals ("RFP") for a management consultant to perform the comprehensive review recommended by the 2008 business process review conducted by the Huron Consulting Group ("Huron Report"). The RFP shall provide for the Vermont Department of Public Service ("DPS") to receive copies of all proposals as well as all reports and deliverables produced by the consultant in connection with the review.

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34. Exh. CVPS-1 at ch. IX, pp. 6-9.

2. CVPS shall provide the DPS with an opportunity to review and comment upon the RFP prior to its issuance, as well as participate in the selection of the consultant to conduct the review, and the development of the review plan. If there are any issues regarding these matters that CVPS and the DPS cannot agree upon, CVPS shall promptly bring these issues to the Board for resolution. This docket shall remain open for purposes of resolving any such issues.

3. CVPS shall issue a contract for the review either within 45 days following the receipt of proposals, or within 10 days after resolution by the Board, if necessary, of any issues concerning the proposals, whichever is later. Upon execution of the contract by the management consultants, CVPS shall advise the DPS and the Board as to the expected completion date for the final report documenting the comprehensive review.

4. CVPS shall file with the Board as a compliance filing in this docket a copy of the final report produced by the management consultants who perform the comprehensive review ordered herein. The DPS shall have an opportunity to file comments with the Board within 30 days of the date CVPS makes this compliance filing.

5. CVPS's 2010 non-power-cost cap shall be increased by 2.25 "average" employees. In its 2010 base rate filing, CVPS shall separately identify the dollar amount added to its non-power-cost cap as a result of this Order.



Dated at Montpelier, Vermont, this 20<sup>th</sup> day of August, 2009.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: August 20, 2009

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*